

LAKE COUNTY BOARD of ADJUSTMENT
February 13, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Steve Rosso, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda; Wally Congdon (sporadic)

Don Patterson (2018 vice-chair) called the meeting to order at 3:30 pm.

SELECT 2019 CHAIR & VICE-CHAIR (3:30 pm)

Motion made by Steve Rosso, and seconded by Mike McKee, to select Don Patterson as chair, and Mary Jensen as vice-chair. Motion carried, all in favor.

RUBIE CONDITIONAL USE—FINLEY POINT (3:31 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the Feb. 2019 meeting file for staff report.) She clarified that neither the applicant nor an agent were present.

Public comment opened:

Susan Klein of Skidoo Lane noted this was part of the Rubie family property of Joanne Rubie. Last summer, two large campers were on the property for the summer. It wasn't good use of that land or of Skidoo Lane. It looked like a KOA. That was not what they'd bought. She requested that the Board not approve this.

Annette Peterson spoke for herself and Mark Peterson, who also resided on Skidoo Lane. This wasn't about the Rubie family or restricting their right to use their property. To her, it was about the Board upholding the currently existing zoning restrictions. This use was not in keeping with the single-family residential neighborhood. Last summer, a second RV joined the first one. She wasn't against RV's that were consistent with the zoning, for two weeks of visiting and then gone. Lots of properties existed on Skidoo Lane where this could happen. She was concerned about the precedent set for other people. Along with the 2 RV's last summer, electrical extension cords were run to these and things were left on the tennis court fence to dry. She was concerned about the precedent, and what someone else might do if variances to the zoning regulations were allowed. What would happen to sewage? Would portapotties be lined up along Skidoo Lane? Many RV's used generators—would those be going in the evenings or 24/7? This was a neighborhood with single-family dwellings. She didn't think [the proposal] was in keeping with the neighborhood, which was the objective of these zoning regulations.

Susan K mentioned she spoke with [an adjacent] neighbor yesterday who was not informed of the hearing. He had to fly out yesterday and could not come [to the meeting]. She relayed that he was totally against this.

Public comment closed.

Steve confirmed with Tiffani that this [proposal] was typically a conditional use, which was permitted as long as it had a public hearing and could be conditioned to meet some of the requirements. There could only be a single [temporary] dwelling. If two showed up, the neighbors could call the Planning office and tell them—some restrictions existed. Part of the Finley Point zoning regulations allowed a temporary dwelling either for a short period [yearly] or for a 2-year period while a single-family dwelling was being constructed or for a 6-month period on then 6 months off, which could be ongoing. There were opportunities to amend zoning regulations by neighbors and so forth. If the majority of the neighbors didn't want this happening, they could go through the amendment process.

Susan said the biggest concern was the extension cords during the fire season. These were draped all over the fields. Steve wondered if the local fire department could talk to the people about the dangers with that. Maybe that could be brought up to the Rubies. If somebody used a properly installed, safe cord from a proper outlet to a proper connection on the RV, he thought the risk would be low. If it wasn't safe, he thought the neighbors had some alternatives to try to enforce a safe use. It was difficult for the Board or staff to deny something that met the regulations.

Steve asked about condition #3 requiring the existing kitchen and bathroom facilities to be utilized. He thought they should use wording that those facilities should be adequate and that the temporary dwelling shouldn't be connected to the existing septic system. If circumstances changed and the owner wished to connect, they would have to get approval from the County. They needed to leave that option open to them. He liked the wording at the top of pg. 3 starting in the second line, beginning "the existing", which might be worked into the condition. Also, RV's had holding tanks so they could use the facilities in the RV but then they'd have to transport the RV somewhere where they could legally empty the holding tank. He thought it was clear that the approval was for a single temporary dwelling. Tiffani agreed the regulations only allowed for one. Jacob said the zoning conformance permit would address that. Steve asked if work would be done to make a permanent spot for an RV, such as pouring a concrete pad to park it on. Tiffani said no. Steve thought this met the requirements of the regulations.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the conditional use for a single RV for a temporary period each year. Motion carried, all in favor.

MORGENSTERN HOLDINGS CONDITIONAL USE—FINLEY POINT (3:48pm)

Clint Evenson presented the staff report. (See attachments to minutes in the Feb. 2019 meeting file for staff report.)

Mike asked about the definition of full time use. Jacob clarified that Masumola zoning just said temporary. It didn't describe that with an amount of days. They would just

restrict that it couldn't be inhabited year-round on a full-time basis, given the wording in this zoning district.

Mike referred to the stormwater management plan mentioned on pg. 3 of the staff report. Clint explained that stormwater was one of the major issues for which to mitigate. It could potentially have impacts if it channelized onto the neighbors' property and caused damage, or if it channeled to the lake with potential pollutants. A stormwater management plan was a way to verify that stormwater coming off the house wouldn't cause damage and would be directed in a safe way that would prevent problems. They were looking for a description from the applicant of how stormwater would be managed to prevent issues. Jacob said this particular structure was right next to the northern property line and only 50 feet from the lake. This was a case where staff would be particularly concerned about stormwater and managing it so it didn't impact either the neighbor or the lake. That was why it was conditioned.

Mike noted the contours showed a gradual slope. Jacob agreed. A lot of soils out there had a lot of loam and clays in them. [Stormwater] wouldn't soak in very well. Steve remarked that the Planning Dept. had a procedure for calculating what kind of management plan you might need. Jacob said they usually did a one-hour, 2-year storm. They had to manage that so it wouldn't impact the surrounding area more than it would have prior to the structure being built. In a case like this, it probably meant gutters and downspouts, and directing it to a swale or vegetation. In this case, it would probably be fairly simple rather than an engineered plan. Staff just wanted to know it was handled.

Mike observed that the drawing and the elevations lacked dimensions. Clint said staff were given plans that showed dimensions and calculated [square footage]. Jacob added since this was a request for a use, staff hadn't included the actual architectural plans [in the staff report]. Steve mentioned [the applicants] would have to get a zoning conformance permit too, where they would go into details of the construction.

Steve recalled the Masumola zoning district regulations weren't as detailed as some of the more recent district regulations. These didn't describe what made a guest house rather than a permanent dwelling. He hadn't seen a laundry room. Was one of the interpretations that this was dependent on the other structure to some extent? Jacob said that was part of it. In talking with Larry Myers, the agent described that the owner's kids would come and stay during the summer for a couple weeks or months. They weren't going to put in a full driveway down there. It would be low impact. It seemed to fit the guest house better than a full time residence.

Larry Myers had no comments.

Public comment opened: None was offered. *Public comment closed.*

Steve referred to pg. 4 and #2 in the findings at the bottom of the page. He suggested rewording the last sentence so it would not contradict the idea that they were meeting the requirement: "If the applicant moves the proposed structure so that it complies with

building setbacks, the proposed use will comply with the conditions and standards for location, design and operation of such use.”

Steve suggested adding a condition regarding stormwater after condition #5 on pg. 5. It would read that ‘Prior to issuance of a zoning conformance permit, the applicants shall submit a stormwater management plan for review and approval.’ The numbering of the subsequent conditions would change accordingly.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the conditional use for a guest house. Motion carried, all in favor.

**FINLEY POINT REAL ESTATE LLC VARIANCES & CONDITIONAL USES—
FINLEY POINT (4:05 pm)**

Rob Edington explained this was actually two different projects on the same property. The owner for the coffee hut, JaJa Cardiff, was present. He presented the staff report. (See attachments to minutes in the Feb. 2019 meeting file for staff report.) On pg. 7, he noted that item #21 went with variance items (#14-17).

Steve corrected the date mentioned on pg. 1 for the restaurant setback variance to be heard from March 9 to March 13. He asked for clarification regarding the zoning conformance that allowed the deck to be built in 2009. Rob said there were 2 components. The expansion of an existing business was the use of the property or facility. The variance would be for the actual physical structure. Steve asked if conditions on the 2009 project would have precluded enclosing it, or if there were concerns at that time. Rob replied the conditions and staff report were shorter back then. In some way he’d treated this as an independent review.

Steve asked about the oral mention of a zero-foot property line setback where the staff report talked about changing the 20 feet to 10 feet. Rob explained the 10 feet was proposed in the narrative from the agent, who thought the property line was over further. After the [new] survey came in, it was noticeable that the setback was an issue. Staff recommended zero feet although the original application materials recommended 10 feet. Jacob clarified that they got the information at the last minute. They put the condition in at zero feet because they realized that 10 feet was no longer possible at that point. It just didn’t get changed in the report.

Mike checked that the request was to enclose the southerly portion of the deck to expand the bar area and add tables on the south end. JaJa Cardiff confirmed for Mike that the westerly side would not be touched. She gave more detail. She didn’t think there would be outdoor seating although she couldn’t 100% guarantee that.

Mike asked about the fire department concern on parking in front of their building. JaJa confirmed this was currently a no-parking area. Rob said the [fire chief’s] concern was that someone pulling a trailer with a truck might park there and walk across the highway. JaJa said people hadn’t done that—most people recognized it was a fire department. The lower lot was available for trucks with trailers to park. With respect to the coffee

hut/fruit stand, Rob showed the ideal location on a diagram in the staff report. Staff's biggest concern was where it would be with respect to the right-of-way. If it was in the right-of-way, she would need MDT (MT Dept. of Transportation) approval.

JaJa described the location of the grassy area where she proposed to put the coffee hut, west of the power pole. Traffic flow could be on the asphalt but the challenge now was that belonged to someone else. She was working on getting in touch with the current owner to see if they could do a boundary line adjustment of 25 feet so she could be within the guidelines of the 25-foot setback from the property line. The Planning Dept. recommended that either they do a boundary line adjustment or that she get a lease agreement from the current owner of the property, and be totally on her property.

Steve checked that the Board was assuming she could do one of these two options and evaluating it as such. JaJa said those were the conditions that the Planning Dept. had asked of her. A third option was to figure out how she could be totally on Finley Point Real Estate property. Mike and Steve wondered how the Board would do this when the agreements weren't in place. Steve suggested they could ask more of these questions after they'd hear from the applicant and the public.

As the applicant, JaJa understood the questions. She and Rob had talked about her application and possible approval with the conditions, and those were conditions she was working on right now. Then she wouldn't have to come back to the board if she was given approval on those conditions. She would submit those to the Planning Dept.: either that she had a lease from the current owner or did a boundary line adjustment or had a current lease to be on the Finley Point [Real Estate property]. She could move forward if she had that.

Public comment opened:

Susan McNatt had a letter from 14 Monechato Club members who wrote in support of this proposal. (See support letter with signatures in the Feb. 2019 meeting file.)

Tracy Baumgartner was here in support of both projects. It would add to the area and was desperately needed. It was a wonderful idea. She thought they'd thought it through.

JaJa Cardiff explained that she had been part of the Finley Point Fire Dept. for 6 years. When this opportunity arose, her vision for the coffee hut was not only to provide a service that they didn't have out there, but to also be able to give back to the community. That was in her business plan. Her vision was to give up to 5% of her profits back to the Finley Point Fire Dept. to support our first responders. She also represented Mark Giacometto. He was out of state. She'd worked for him for 8 years and had needed his permission to do this. Enlarging the restaurant had been in the works, but he hadn't gotten around to doing the paperwork. Steve asked if the previous two permits that were never acted on were for the same work. JaJa and Rob clarified that he hadn't done the conditional use, which was more involved, so JaJa said she'd take that on. He had applied for zoning conformance permits, which were not issued.

Public comment closed.

JaJa was trying to reach a property owner in Ohio although she hadn't yet succeeded. The property had gone into a trust to the kids when the parents died. The property was pie-shaped, and heavily wooded with steep slopes and marsh. Looking at the setbacks, nothing could really be done with the property. She was going to suggest a boundary line adjustment to the owner. Steve noted that pie-shaped corner was being used by the customers for parking and access on and off the highway. JaJa referred to the front part next to MT Hwy 35. It was a right-of-way for Hwy 35 for MDT. She wasn't going to go in there. Steve and JaJa noted part of the corner of the pavement was on the neighbor's property. They didn't think it was until they had the survey done. Steve thought people would still drive on that property to access or leave the coffee hut if the hut was moved.

Steve turned to attachment 5. Customers sometimes showed up in waves. JaJa described how cones would be set up with arrows so people couldn't drive up with the passenger side to the window and so they would have an 'exit only'. That would be closed by 3pm. The restaurant opened at 4pm. The cones would be set to the side. Steve's concern was if one car drove up on the wrong side, a handful of others would follow suit, and then the cars would be out on MT Hwy 35. JaJa agreed with Steve that the signage would be very important to make this work. JaJa said she would have to have cones so cars could not come in through the right-of-way. They'd have to come around. Mike appreciated and applauded JaJa's vision of giving back by donating a share of the proceeds to the fire dept. although he couldn't use that as a reason to vote for it.

Steve suggested changes in the findings. At the end of the first sentence in item e on pg. 12, he added the words 'which are critical for a successful business'. At the end of the second sentence in the same paragraph, he added ', but that may limit the success of the business.' In the next paragraph, 'to the approving' changed to 'to approving' in the third line. On pg. 13 in f.v, 'implement' changed to 'implemented'.

Mike asked if building permits were state issued. Rob replied that Lake County didn't administer the Uniform Building Code. Planning did permits related to land use. If it was commercial in nature, the applicants would need to get a building permit through the state, as well as electrical and plumbing. Mike observed the distinction was commercial versus residential.

Steve summarized that JJ would do one of the three things that were required to make this work with the neighbor's property. The conditions and terms were adequate to cover even if she didn't get permission to locate the hut and stand (which were two different structures) on what was now the neighbor's property. Did she need approval if people accessed the business from the neighbor's property? Rob thought that was a legal question. Steve pointed to #10 on pg. 20. Was one of those activities driving access to the business? Wally said it was. They weren't in the business of giving people a permit to use the neighbor's property unless the neighbor consented. It didn't have to be an easement. An encroachment permit for a period of time worked. Steve said that [staff] needed to make sure [the applicants] were aware that even if the structures couldn't be

located on that property, they needed to get approval for people accessing the business to drive across that property, as they were doing now. Staff needed to be aware of not just where the location of the hut was, but how the property would be used by customers.

Motion made by Steve Rosso to approve variance #1 (coffee hut within 100 feet of the centerline of MT Hwy 35), variance #2 (coffee hut within 20 feet of a side property line) and conditional use for Community Commercial within 500 feet of the centerline of MT Hwy 35, along with the findings of fact. Mike asked for clarification about 100 feet versus 50 feet from the centerline. Steve outlined that there were two issues. There was a setback, and there were uses within 500 feet. The zoning district said it didn't want community commercial within 500 feet of the centerline of Hwy 35 unless they got a conditional use. **Seconded by Mike McKee. Motion carried, all in favor.**

Rob clarified that they could approve the conditional use for the restaurant expansion but the applicant couldn't proceed with construction and obtain a permit within that setback until the variance had been passed. Since the conditional use had been heard today, they should probably decide on that one. Rob clarified that FP 19-04 conditional uses were for the expansion of the use to allow the business to expand.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the conditional use for the expansion of the restaurant business along with the findings of fact. Motion carried, all in favor.

OTHER BUSINESS (5:10 pm)

March meeting was touched upon.

Don Patterson, chair, adjourned the meeting at 5:12 pm.